D.B. CIVIL SPECIAL APPEAL (WRIT) NO.368/2007
Brij Vallabh Vs. Mohan Kishan & Ors.

Date : 17.5.2007

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE BHANWAROO KHAN

Mr. K.L. Jasmatia for the appellant.

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Having heard learned counsel for the appellant we do not find any merit in this appeal.

It appears that dispute exists between the parties in respect of a wall situated between the respective houses of the parties which is claimed to be joint. By order dated 1.5.2006, the learned trial court has ordered the appellant to repair his side of wall and has also directed the defendant to repair his side of wall as he had expressed his desire to repair his side of wall at his own cost. After this order was made, another application was moved by the present appellant seeking permission to repair the side of wall falling towards the defendant's house, as according to him, the defendant has not repaired his side of wall, the said application has been rejected by the trial court on 28.9.2006.

We are of the opinion, that there was no error in

rejecting the application of the appellant seeking to repair wall from the side falling towards the house of defendant. As a matter of fact, the direction already exists to repair the side of wall lying towards the house of defendant as noticed above and the proper remedy would have been to file application under Section 39 Rule 2A seeking compliance of that direction. If such application is made, the trial court would have to examine the issue and if necessary appoint a Commissioner to inspect the site and would have to compel him with direction to comply with direction of order dt.1.5.2006.

Subject to the aforesaid observations, the appeal is dismissed.

[BHANWAROO KHAN], J. [RAJESH BALIA], J.

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